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THE AFFILIATED GROUP, INC.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
EASTERN DIVISION

KEVIN DOWELL,

Plaintiff,

vs.

THE AFFILIATED GROUP, INC.

Defendant.

CASE NO. 5:12-cv-01979-ABC-DTB

**ANSWER TO COMPLAINT**

**ANSWER TO COMPLAINT**

COMES NOW, Defendant THE AFFILIATED GROUP, INC. ("Defendant"),  
by and through its counsel of record, and hereby answers the Complaint for  
Violation of Rosenthal Fair Debt Collection Practices Act and Federal Fair Debt  
Collection Practices Act (hereinafter, the "Complaint") filed by Plaintiff KEVIN  
DOWELL ("Plaintiff"), by admitting, denying, asserting and alleging as follows:

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 LOS ANGELES, CALIFORNIA 90045

## I. INTRODUCTION

1. Defendant admits that Plaintiff brought this action under the Rosenthal Fair Debt Collection Practices Act, California *Civil Code* §§ 1788, *et seq.* (the “Rosenthal Act”), and the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. §§ 1692, *et seq.*, however; Defendant denies any violation thereof and Defendant denies any wrongdoing whatsoever. Except as specifically admitted herein, Defendant denies the allegations contained in Paragraph 1 of the Complaint.

## II. PARTIES

2. Defendant admits Plaintiff is a natural person, however; Defendant is without knowledge to form a belief as to the truth of the allegations as to Plaintiff’s residence and thereby denies this allegation at this time. Defendant denies the remaining allegations on the grounds that they call for a legal conclusion. Except as specifically admitted herein, Defendant denied the allegations contained in Paragraph 2 of the Complaint.

3. Defendant admits that THE AFFILIATED GROUP, INC. is a company that uses the mails and telephone in the course of its business of collecting debts allegedly due another. Under certain circumstances, Defendant may be considered a “debt collector” as that term is defined in the FDCPA and the Rosenthal Act, however; Defendant denies this allegation on the grounds that it calls for a legal conclusion. Defendant denies the remaining allegations on the grounds that they call for a legal conclusion. Except as specifically admitted herein, Defendant denies the allegations contained in Paragraph 3 of the Complaint.

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### III. FACTUAL ALLEGATIONS

4. Defendant admits that it contacted Plaintiff in an attempt to collect on an outstanding debt.

5. Defendant denies the allegations contained in Paragraph 5 of the Complaint.

6. Defendant denies the allegations contained in Paragraph 6 of the Complaint.

7. Defendant denies the allegations contained in Paragraph 7, including subparts a through i, of the Complaint.

8. Defendant denies the allegations contained in Paragraph 8 of the Complaint.

#### COUNT I: VIOLATION OF ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT

9. Answering Paragraph 9 of Plaintiff's Complaint, Defendant hereby incorporates by reference Paragraphs 1 through 8, above.

10. Defendant denies the allegations contained in Paragraph 10 of the Complaint, including Plaintiff's Prayer for Relief.

#### COUNT II: VIOLATION OF FAIR DEBT COLLECTION PRACTICES ACT

11. Answering Paragraph 11 of Plaintiff's Complaint, Defendant hereby incorporates by reference Paragraphs 1 through 10, above.

12. Defendant denies the allegations contained in Paragraph 12 of the Complaint, including Plaintiff's Prayer for Relief.

13. All allegations in the Complaint, not otherwise specifically admitted or denied, are denied.

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**AFFIRMATIVE DEFENSES****FIRST AFFIRMATIVE DEFENSE****(Failure to State Cause of Action)**

14. Plaintiff's Complaint, and each cause of action contained therein, fails to state facts sufficient to constitute a valid cause of action against Defendant.

**SECOND AFFIRMATIVE DEFENSE****(Compliance with Statute)**

15. The conduct of Defendant at all times complied with all applicable statutes, regulations and laws; accordingly, the Complaint and each purported cause of action alleged therein against Defendant is barred.

**THIRD AFFIRMATIVE DEFENSE****(Bona Fide Error)**

16. As a separate, affirmative defense, assuming *arguendo* that this Defendant violated a statute alleged in the Complaint, which presupposition the Defendant denies, such violation was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

**FOURTH AFFIRMATIVE DEFENSE****(No Intentional or Reckless Conduct)**

17. As a separate, affirmative defense, Defendant contends that it did not engage in any conduct that was outrageous, intentional and malicious or done with reckless disregard with respect to Plaintiff. Defendant also alleges that it never engaged in any knowing, willful or fraudulent conduct with respect to Plaintiff.

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**FIFTH AFFIRMATIVE DEFENSE**

**(Mitigation of Damages)**

18. Plaintiff is not entitled to recover any damages, or any recovery awarded should be reduced by the amount of damages which reasonably could have been avoided, because Plaintiff failed to take reasonable steps to mitigate his damages with respect to the matters alleged in the Complaint.

**SIXTH AFFIRMATIVE DEFENSE**

**(FDCPA Damages are Limited)**

19. As a separate, affirmative defense, Defendant alleges that if Plaintiff was damaged in any sum or sums alleged, which Defendant denies, then Plaintiff's damages are limited by 15 U.S.C. § 1692k(a)(1), § 1692k(a)(2)(A), § 1692k(a)(3) and 15 U.S.C. § 1692k(b)(1).

**SEVENTH AFFIRMATIVE DEFENSE**

**(Maintained Reasonable FDCPA Procedures)**

20. As a separate, affirmative defense, Defendant alleges that at all times alleged in the Complaint, Defendant maintained reasonable procedures created to prevent any type of intentional or negligent violations of the FDCPA.

**EIGHTH AFFIRMATIVE DEFENSE**

**(Actions Were Proper)**

21. As a separate, affirmative defense, Defendant alleges that the alleged actions of Defendant were proper and did not violate any provisions of 15 U.S.C. §§ 1692, *et. seq.*

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**NINTH AFFIRMATIVE DEFENSE**

**(Reservation of Rights)**

22. Defendant reserves the right to amend its Answer and claims herein by adding additional parties, affirmative defenses, counterclaims, cross-claims, and/or third party claims, as additional investigation, discovery or circumstances warrant.

**PRAYER FOR RELIEF**

WHEREFORE, Defendant prays that Plaintiff's Complaint be dismissed with prejudice, for its attorneys' fees and costs incurred herein, and for such further relief as the Court deems just and equitable.

DATED: November 20, 2012

CARLSON & MESSER LLP

By /s/ J. Grace Felipe  
David J. Kaminski  
J. Grace Felipe  
Attorneys for Defendant,  
THE AFFILIATED GROUP, INC.

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STATE OF CALIFORNIA                 )  
COUNTY OF LOS ANGELES          )      SS.

I am over the age of eighteen years and not a party to the within action. My business address is 5959 W. Century Blvd., Suite 1214, Los Angeles, CA 90045.

**SEE ATTACHED SERVICE LIST**

**[X] (FEDERAL)** - I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Kathryn A. Brown  
Kathryn A. Brown

**SERVICE LIST**  
**Kevin Dowell v. The Affiliated Group, Inc.**  
**File No.: 07286.00**

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